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SUBJECT: UN CONVEYS INTENTION TO BUILD CAPACITY FOR SOMALI
PIRATE PROSECUTIONS

Classified By: Minister Counselor Mary McLeod for reasons 1.4 (b) and (d).

11. (U) This is an action request, see paragraph eight below.

12. (U) Summary: Ambassador DiCarlo and USUN legal advisers met with the UN Legal Counsel, Patricia O'Brien on June 26. O'Brien presented a UN initiative that is intended to boost the capacity of states near Somalia to prosecute and imprison pirates including Kenya, Tanzania, Djibouti, Seychelles, Yemen, and Oman. The Secretary- General (SG) will dispatch O'Brien to Kenya on July 1 to discuss a possible a draft agreement on prosecuting and imprisoning pirates and capacity building which the UN Secretariat wants to negotiate bilaterally with the states mentioned above. O'Brien told USUN on June 29 that although she would still travel to Kenya, she would not be negotiating the text of an agreement with Kenya as it is necessary for the Security Council to provide a mandate for such action. USUN received a copy of the draft agreement from the UN on June 30 and forwarded a copy to the Department. End Summary.

13. (U) O'Brien began the presentation by sharing that the SG is concerned that the UN needs to do more to assist states in the region near Somalia to prosecute and imprison pirates. Acknowledging that the U.S.-led contact group on piracy is working along the same lines, she said that the UN would be careful to complement and not interfere with the contact group's work. So far, O'Brien said that the SG's intent to do more has been well-received by regional states and by members of the P5. Admitting that Russia is keen on the development of an international tribunal to prosecute pirates, O'Brien said that she personally does not support such a tribunal, but was clear that the UN is not ruling out other or additional possibilities for dealing with the problem and is not taking a position on the international tribunal. Ambassador DiCarlo responded that the United States does not support the creation of an international tribunal to prosecute pirates as tribunals are set up to deal with specific conflicts or events and piracy could be an ongoing activity.

14. (C) O'Brien conveyed that the UN's focus will be on capacity building and that any agreements between states in the region and the UN would include provisions for detentions and prosecution of pirates in the region. She also said that the agreements would include provisions for a country to support separate aspects of the judicial process such as detention, trial and enforcement of sentences. When asked to what extent the UN would broker the use of the agreements between the state of the ship that apprehends a pirate and the state providing judicial process support, O'Brien said that the UN (likely UNODC) would be involved in the process at least initially. Comment: It seems somewhat peculiar that the agreements the UN is trying to create are between the UN and the regional states instead of agreements between states whose ships are operating in the area to apprehend pirates and those states that have the judicial capacity to deal with pirates. End Comment.

¶15. (U) The SG will dispatch O'Brien to Kenya July 1 to meet with high-level Kenyan officials to discuss such a concept as Kenya has already established agreements with the U.S. and the U.K. O'Brien said that Kenya should not be burdened alone with prosecuting pirates and offered that Tanzania, the Seychelles, and Yemen have some existing capacity and have responded enthusiastically to the UN's idea. She noted that the UN recognized there might be issues concerning prosecution and imprisonment in some of those states that might complicate the process of negotiating agreements. O'Brien also noted that each agreement would include minimum human rights standards for trials and imprisonment.

¶16. (C) In terms of action by the UN Security Council, while the Office of the Legal Adviser (OLA) feels that resolution 1851 provides sufficient legal basis for the initiative, they would like the Council to support a UN initiative to begin negotiations on agreements with states in the region. Comment: It appears that the SG sees an opportunity for the UN to fill some part of the "piracy - judicial process" void that exists in the region and has instructed his lawyer to address the issue. Based on the later phone call, O'Brien stated that a more considered mandate from the Security Council is desirable before the UN can legitimately begin negotiations with Kenya or any other country in the region on an actual text. End Comment.

¶17. (U) Ambassador DiCarlo asked what the SG's ideas were in terms of funding. O'Brien shared that funding would come from UN offices such as UNDP and UNODC and would be drawn from within those offices' existing mandates and that additional funding could come from the Voluntary Trust Fund

that is under consideration.

¶18. (U) USUN requests instructions from the Department on the U.S. position in reaction to the SG's initiative to fill an aspect of the Somalia piracy judicial process void.
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